

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,

Plaintiff,

v.

B. JOHNSON, et al.,

Defendants.

No. 2:21-cv-0692 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to this court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff has filed a motion to produce custodial officer's personnel records and a motion to extend the discovery deadline date. ECF Nos. 34, 36. The motion is fully briefed (see ECF Nos. 34, 37, 38) (plaintiff's motion; defendants' opposition; plaintiff's reply, respectively), and defendants have not filed an objection to plaintiff's request for an extension of his date to respond to discovery.

The court construes plaintiff's motion to produce custodial officer's personnel records as a motion to compel. For the reasons stated below, the motion to compel will be denied and the motion for an extension of time to respond to discovery will be granted.

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1 I. MOTION TO COMPEL2 A. Parties' Arguments

3 Plaintiff asks the court to direct defendants to produce the personnel records of defendant  
4 correctional officer E. Garcia. ECF No. 34 at 1-3; 6-9. Plaintiff states that these and other  
5 requested materials are necessary so that he may properly prepare for trial. Id. at 17.

6 Defendants oppose the motion on the grounds that it is premature. ECF No. 37 at 2.  
7 Referencing the court's discovery and scheduling order, they contend that plaintiff served his  
8 requests for production of documents on them on October 31, 2022, and that the court's  
9 scheduling order allows defendants forty-five days from that date to respond to them. Id. This,  
10 defendants assert, makes their response to plaintiff's requests for production of documents due  
11 December 15, 2022. Id.

12 In plaintiff's reply to defendants' opposition, he states that the motion is not a motion to  
13 compel; it is a Pitchess<sup>1</sup> motion, and it is part of his discovery requests for defendants. ECF No.  
14 38 at 1. Plaintiff asks that the court rule on it after defendants' responses to his discovery  
15 requests have been served. Id. at 2.

16 B. Discussion

17 Plaintiff's motion must be denied. To the extent that it is construed as a motion to  
18 compel, it is premature. Plaintiff does not dispute defendants' assertion that he served his written  
19 discovery requests on them on October 31, 2022. See generally ECF No. 38 (plaintiff's reply).  
20 Therefore, consistent with the court's discovery and scheduling order, defendants have until  
21 December 15, 2022, to respond to plaintiff's requests for production of documents. See ECF No.  
22 29 at 5 (discovery and scheduling order). Assuming plaintiff has made requests for the personnel  
23 records of defendant Garcia in his discovery documents and that defendants' responses are sent to  
24 plaintiff on that date, until plaintiff has received defendants' discovery responses and reviewed  
25 them, he will not know whether the personnel information he seeks from defendants has been  
26 provided to him. Plaintiff as much as acknowledges this fact when he asks the court not to rule  
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28 <sup>1</sup> Pitchess v. Los Angeles County Superior Court, 11 Cal.3d 531 (1974). See ECF No. 34 at 4.

1 on the motion to compel until defendants have served him with their responses to his discovery  
2 requests. See ECF No. 38 at 2.

3 The parties have until February 3, 2023, to complete discovery and to file motions to  
4 compel. ECF No. 29 at 5. If, closer to that date, plaintiff believes defendants have not provided  
5 discovery he believes he is entitled to receive, and he has made the proper formal requests for it  
6 of defendants with no success, he may file another motion to compel. When doing so, however,  
7 he must follow the federal rules governing discovery and motions to compel. See, e.g., Fed. R.  
8 Civ. P. 37.

9 Finally, to the extent plaintiff argues that the motion should not be denied as premature  
10 because it is a Pitchess motion and not a motion to compel (see ECF No. 38 at-1 2), this argument  
11 also fails. Pitchess motions are for use by defendants in state criminal trials, not by plaintiffs in  
12 federal civil rights actions. See generally Turner v. Spence, No. CIV S 07-0022 GGH P, 2008  
13 WL 927709 at \*9 (E.D. Cal. Apr. 4, 2008) (citing City of Santa Cruz v. Municipal Court, 49  
14 Cal.3d 74, 86 (1989); Pitchess v. Superior Court, 11 Cal.3d 531, 537 (1974)). For this reason as  
15 well, this motion will be denied.

## 16 II. MOTION FOR EXTENSION OF TIME

17 In plaintiff's motion for an extension of time of the close of the date of discovery, plaintiff  
18 argues that it should be granted because on or around November 16, 2022, he was transferred to  
19 Pelican Bay State Prison, and as a result, his property will not be issued to him for at least thirty  
20 days. ECF No. 36 at 1. As a result, he believes that he may not be able to timely respond to  
21 defendant Johnson's first request for admissions, which were re-served on him on November 4,  
22 2022, and thus, are due on December 19, 2022. Id. at 1-2. Defendants have not filed objections  
23 to the motion.

24 Plaintiff's motion for an extension of time to respond to defendants' discovery requests  
25 will be granted. He shall have forty-five days from the date of this order to respond them.

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1 Accordingly, IT IS HEREBY ORDERED that:


2 1. Plaintiff's motion to produce custodial officer's personnel records, which the court  
3 construes as a motion to compel (ECF No. 34), is DENIED as premature;

4 2. Plaintiff's motion for an extension of time to respond to defendants' discovery  
5 requests (ECF No. 36) is GRANTED;

6 3. Within forty-five days of the date of this order, plaintiff shall serve responses to  
7 defendants' discovery requests, and

8 4. All other directives in the court's discovery and scheduling order issued October 17,  
9 2022 (ECF No. 29) are to remain in full force and effect.

10 DATED: December 19, 2022

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12 ALLISON CLAIRE  
13 UNITED STATES MAGISTRATE JUDGE  
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